PRITAM KAUR v. RAJARATNAM & ANOR.

[O.C.J. (Raja Azlan Shah J.) April 23, 1970]

[Kuala Lumpur — Civil Suit No. 1329 of 1967]

Landlord and Tenant — Recovery of possession — Claim for arrears of rent — Demand — Notice to quit — Alterations effected on premises — Repairs and replacements — Whether substantial enough to enable the house to be deemed "new premises" — Control of Rent Ordinance, 1956 and Control of Rent Act, 1966 — "Buildings completed after 31st January 1948" — Construction of — Test whether old building was so substantially or fundamentally altered so as to become a "new building".

The phrase "buildings completed after 31st January 1948" in section 4(2) of the Control of Rent Act, 1966 envisages either of two situations:—

(1) a building on which construction work was started before 31st January 1948 but which is still uncompleted till a date after 31st January 1948;

(2) a building completed before 31st January 1948 but which has since that date been so fundamentally changed that it can no longer be said to exist and another building has replaced it.

The test whether the old building was so substantially or fundamentally altered so as to become a "new building" under the Control of Rent Ordinance, 1956 or merely another "building completed after 31st January 1948" under the 1966 Act remains the same.

In this case the plaintiff owner claimed vacant possession of certain premises originally rented to the defendants at $7 a month. The plaintiff claimed that the premises, though built before January 31, 1948, had been removed out of the ambit of the Control of Rent Act, 1966 by virtue of the premises being so substantially altered in 1961 as to constitute new premises, and that the rental was $46. The alterations effected on the premises were re-cementing of the floor, the conversion of the kitchen into a sitting hall, the repairs to the roof and the replacement of the plank walls. In all, the house was extended one and a half times.

The issues for determination were: (a) whether the premises were rent-controlled and (b) whether the defendants were in arrears of rent and if so, whether the tenancy was lawfully terminated.

Held: (1) the repairs and extension work to the premises in question had not been so substantial as to have transformed the general structure of the house so that it can be said that the premises was a new and different house in fact from the old one before the alterations were effected, the new house having shed all the attributes of the old. Therefore, since the premises could not fall within either of the two categories envisaged by the phrase "building completed after 31st January 1948", they are subject to the provisions of the 1966 Rent Act;

(2) to be lawful, the amount demanded must be that sanctioned by law. In this case, the Rent Assessment Board having fixed the maximum recoverable rent at $7, the only lawful rent that could be demanded by the plaintiff was $7; even if there had been an agreement to raise the rental to $46, the demand for the increased rental would be unlawful, the increases in rent not having been sanctioned by the Rent Assessment Board. There having been no lawful demand for rent made by the plaintiff, the defendants were therefore not in arrears of rent. Therefore no order for possession could be made and accordingly, the plaintiff's claim for double rental failed.

Cases referred to:-

(1) *Success Enterprises Ltd.* v. *Eng Ah Boon* [1968] 1 M.L.J. 75.

(2) *Penang Motors (1950) Ltd.* v. *Suah Motors* [1959] M.L.J. 133.

(3) *Lee Lee Choon* v. *Teng Ai Cheng* [1966] 1 M.L.J. 128.

(4) *Syed Ahmed Al-Junied & Ors.* v. *Reshty* [1966] 2 M.L.J. 124, F.C.

CIVIL SUIT.

K. L. Devaser for the plaintiff.

G. Vadiveloo for the defendant.

Cur. Adv. Vult.

Raja Azlan Shah J.: In this case, the plaintiff, the owner of the premises No. 22, Jalan Maaroff, claims vacant possession against the defendants, the tenants of the said premises. The monthly rental chargeable in respect of the premises is disputed: the defendant tenants claim that the premises are subject to the Control of Rent Act, 1966 and the rental is and was at all material times $7, this sum having been fixed by the Rent Assessment Board in 1955; the plaintiff claims that the premises, though built before 31st January 1948, have been removed out of the ambit of the Rent Act by virtue of the premises being so substantially altered in 1961 as to constitute new premises, and that the rental is $46, this sum having been agreed upon by the defendants when the plaintiff consented to repair and extend the premises. The plaintiff contends that she has duly determined the said monthly tenancy by a notice to quit served on the defendants who, after the expiry of the said notice on 31st August 1967 are now remaining in occupation of the premises as trespassers. She alleges that the defendants have not paid rental at the rate of $46 per month since 1st January 1962 although its payment has been demanded by her or her attorney at the premises on many occasions. In addition to vacant possession, the plaintiff claims arrears of rent from 1st January 1962 to 31st August 1967 and double rental per month from 1st September 1967 until vacant possession.

The defendants contend that the said notice to quit is bad and that there was no valid or lawful demand. They claim that the plaintiff has refused and still refuses to accept the rental of $7 per month tendered by them.

The issues that arise for determination are first, whether the premises are rent-controlled and secondly, whether the defendants were in arrears of rent and if so, whether the tenancy was lawfully terminated.

In order to determine whether the premises are still subject to the provisions of the Rent Act, 1966, it must be shown that the building was not so reconstructed or so substantially altered as to constitute new premises. It is disputed as to which party effected the alterations and as to the amount spent on them. The plaintiff claims she spent $1,490 on repairs and extension which were carried out in 1961 at the request of the defendants. The defendants claim that they were the ones who carried out the repairs and extension work in 1966 at a sum of about $400 and they produced bills and a letter to an insurance company for a loan to support their testimony. It does not seem necessary to decide which party effected the repairs because the only relevant question is the determination of whether the alterations were substantial enough to bring the premises outside the ambit of the Rent Act. But even if it were necessary, I would be inclined to

accept the defendants' version of the story. It seems more plausible that the premises should look like it is now, as represented by the 4 photographs put in as exhibits after a sum of $400 is spent on it rather than a sum of $1,490. Then again, where the plaintiff cannot offer any concrete evidence to substantiate her allegations, the defendants did substantiate theirs by producing receipts of bills and a letter to an insurance company for a loan to help finance their expenses incurred in repairs and extension work.

The alterations effected on the premises were recementing of the floor, the conversion of the kitchen into a sitting hall, the repairs to the roof and the replacement of the plank walls. In all, the house was extended one and a half times. Are these alterations substantial enough to enable the house to be deemed "new premises"? Mr. Devaser for the plaintiff argues that the onus of proving the substantiality of the alterations is lower in the Rent Act of 1966 than in the Rent Ordinance of 1956. This, he contends, is due to the marked absence of the adjective "new" in the definition of buildings outside the Rent Act, 1966, which adjective was present in the 1956 Rent Ordinance. He argues that under the 1966 Act, it is no more necessary, as it was under the 1956 Ordinance, to satisfy the court that it is an entirely new building, but so long as the building, no matter when built, was completed, presumably in its alteration work, after 31st January 1948, it would be outside the 1966 Rent Act. I cannot find any merit in this argument. The phrase "buildings completed after 31st January 1948" in section 4(2) of the 1966 Rent Act envisages either of two situations: —

(1) a building on which construction work was started before 31st January 1948 but which is still uncompleted till a date after 31st January 1948;

(2) a building completed before 31st January 1948 but which has since that date been so fundamentally changed that it can no longer be said to exist and another building has replaced it.

The test whether the old building was so substantially or fundamentally altered so as to become a "new building" under the 1956 Ordinance or merely another "building completed after 31st January 1948" under the 1966 Act remains the same. Mr. Devaser cannot use the aforesaid argument to contend that the said premises are outside the 1966 Rent Act on the ground that alterations to it were completed after 31st January 1948 even though the alterations cannot be said to have fundamentally changed the premises. Here, the premises were completed before 31st January 1948. I do not consider that the repairs and extension work have been so substantial as to have transformed the general structure of the house so that it can be said that the present premises at No. 22, Jalan Maaroff is a new and different house in fact from the old one before the alterations were effected, the new house having shed all the attributes of the old. (See *Success Enterprises Ltd.* v. *Eng Ah Boon*[1]). Therefore, since the premises cannot fall within either of the two categories envisaged by the phrase "buildings completed after 31st January 1948", they are subject to the provisions of the 1966 Rent Act.

It must now be determined whether the defendants were in arrears of rent to entitle the plaintiff to an order for possession. The plaintiff contends that when the amount of rent was fixed by the Rent Assessment Board in 1955, the landlord, one Kandiah, was not made a party to the proceedings and that since the order was made between one David who is alleged to be merely a tenant and the sub-tenant, the order could not be binding on the landlord and accordingly could not be binding on the plaintiff as present owner of the house and land. However, one Kandasamy, who is an "independent witness' according to the plaintiff, supported the testimony of the defendants when he testified that David was the owner of the house and that Kandiah was merely the owner of the land. The order was therefore made between the owner of the premises and the tenant and would be binding on all subsequent landlords and tenants of the premises (section 8(8) of the Rent Ordinance 1956). By section 26 of the Rent Act, this order has still binding force.

The defendants can only be said to be in arrears of rent as from the date the lawful demand for payment is made (see *Penang Motors (1950) Ltd.* v. *Suah Motors*).[2] What constitutes a lawful demand? The plaintiff relies on the case of *Lee Lee Choon* v. *Teng Ai Cheng*[3] to contend that the word "demand" should be construed in its popular sense and not as a formal demand made in accordance with the strict rules of the common law. But this does not necessarily infer that the plaintiff can demand, be it orally or by letter, any amount he chooses. To be lawful, the amount demanded must be that sanctioned by law. In this case, the Rent Assessment Board having fixed the maximum recoverable rent at $7, the only lawful rent that can be demanded by the plaintiff is $7.

Evidence was given for the plaintiff to show that demands for rent were made orally in 1961, 1962, 1963 and by letter in 1967. All these demands were for a rental of $46 which are clearly unlawful, seeing that the maximum recoverable rental is only $7. Even if there had been an agreement to raise the rental to $46, the demand for the increased rental would also be unlawful, the increase in rent not having been sanctioned by the Rent Assessment Board. (See *Syed Ahmed Al-Junied & Ors.* v. *Reshty*).[4] On the other hand, the defendants gave evidence to show that they had offered and are still willing to pay the plaintiff the rental of $7. In the circumstances, the only conclusion that can be drawn is that the defendants were not in arrears of rent, there having been no lawful demand for rent made by the plaintiff. No order for possession can be made and accordingly, the plaintiff's claim for double rental fails.

The plaintiff's action is dismissed with costs and the defendants are entitled to the tenancy of the premises at the maximum recoverable rental of $7 per month.

Action dismissed.

Solicitors: *K. L. Devaser & Co.; D. P. Xavier & Co.*